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7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 GREGORY COFFENG, MARK GLASER
12 and JORDAN WILSON, individually and on
behalf of all others similarly situated,

13 Plaintiffs,

14 v.

15
16 VOLKSWAGEN GROUP OF AMERICA,
INC.,

17 Defendant.
18
19

Case No. 17-cv-01825-JD

**[Proposed] ORDER PRELIMINARILY
CERTIFYING SETTLEMENT CLASS,
GRANTING PRELIMINARY APPROVAL
OF SETTLEMENT AND APPROVING
CLASS NOTICE**

1 THIS MATTER having been opened to the Court by Plaintiffs' Unopposed Motion for
2 Preliminary Approval ("Motion for Preliminary Approval") of the proposed Settlement in the
3 above Action;

4 WHEREAS, the Court having reviewed and considered the Motion for Preliminary
5 Approval and supporting materials filed by Settlement Class Counsel; and

6 WHEREAS, the Court held a hearing on the Motion for Preliminary Approval on
7 _____; and

8 WHEREAS, this Court has fully considered the record and the requirements of law; and
9 good cause appearing;

10 IT IS THIS ____ day of _____, 2018 ORDERED that the Settlement is hereby
11 PRELIMINARILY APPROVED. The Court further finds and orders as follows:

12 1. The Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), and venue is
13 proper in this district.

14 2. The Court has personal jurisdiction over the Plaintiffs, Settlement Class Members,
15 and the Defendant.

16 3. To the extent not otherwise defined herein, all defined terms in this Order shall
17 have the meaning assigned in the Settlement Agreement.

18 4. The Settlement Agreement was the result of the Parties' good-faith negotiations.
19 The Settlement was entered into by experienced counsel and only after extensive arm's length
20 negotiations. The Settlement Agreement is not the result of collusion.

21 5. The proceedings that occurred before the Parties reached a resolution of this matter
22 gave counsel opportunity to adequately assess this case's strengths and weaknesses and thus to
23 structure the Settlement Agreement in a way that adequately accounts for those strengths and
24 weaknesses.

25 6. The Settlement is fair, reasonable and adequate, and has no obvious deficiencies
26 that would preclude preliminary approval.

27 7. Because the Settlement meets the standards for preliminary approval, the Court
28 preliminarily approves all terms of the Settlement Agreement and all of its Exhibits.

8. The Court preliminarily finds, for settlement purposes only, that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied. The Court certifies a Settlement Class, as follows:

All persons or entities who purchased or leased a Settlement Class Vehicle defined as certain 2008 through 2014 model and model year VW and Audi vehicles, as more particularly designated by Vehicle Identification Number ("VIN") listed on Exhibit 4 of the Settlement Agreement, imported and distributed by Defendant Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico (hereinafter "the Settlement Class").

Excluded from the Settlement Class are (a) anyone claiming personal injury, property damage and/or subrogation; (b) all Judges who have presided over this matter and their spouses; (c) all current employees, officers, directors, agents and representatives of Defendants, and their family members; (d) any affiliate, parent or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (e) anyone acting as a used car dealer; (f) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (g) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims, and (k) any Settlement Class Member that filed a timely and proper Request for Exclusion from the Settlement Class; and (l) any claims involving personal injury.

9. The Court conditionally certifies the proposed Settlement Class, and preliminarily finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

(a) Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

(b) Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines there are common issues of law and fact for the Settlement Class.

(c) Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Plaintiffs are typical of the claims of the Settlement Class that they represent, in that the Class Representatives allege they are purchasers of a Settlement Class Vehicle. The Court hereby appoints the following Plaintiffs as Class Representatives for the Settlement Class: Gregory Coffeng, Mark Glaser and Jordan Wilson.

1 (d) Pursuant to Fed. R. Civ. P. 23(a)(4), the Class Representatives will fairly and
2 adequately protect and represent the interests of all members of the Settlement
3 Class and the interests of the Class Representatives are not antagonistic to those
4 of the Settlement Class. The Class Representatives are represented by counsel
5 who are experienced and competent in the prosecution of complex class action
6 litigation.

7 10. The Court further preliminarily finds that the requirements of Rule 23(b)(3) are
8 satisfied, for settlement purposes only, as follows:

9 (a) Questions of law and fact pertaining to the members of the Settlement
10 Class, as described above, predominate over questions that may affect only individual
11 members; and

12 (b) A class action is superior to all other available methods for the fair and
13 efficient adjudication of this controversy.

14 11. The Court has reviewed and finds that the content of the proposed forms of Notice
15 attached as Exhibit 5 to the Settlement Agreement and the Claim Forms attached as Exhibit 1 to
16 the Settlement Agreement, which are to be displayed, along with the Settlement Agreement and its
17 Exhibits, on the Settlement website, satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R.
18 Civ. P. 23(e)(1), and Due Process and accordingly approves the Notice and Claim Form.

19 12. The Court further approves the proposed methods for giving notice of the
20 Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement. The
21 Court has reviewed the plan for distributing Notice to the Settlement Class ("Notice Plan"), and
22 finds that the Members of the Settlement Class will receive the best notice practicable under the
23 circumstances. The Court specifically approves the Parties' proposal that on an agreed upon date
24 with the Claim Administrator, but in no event more than seventy five (75) days after entry of the
25 Preliminary Approval Order, the Claim Administrator shall cause individual Class Notice,
26 substantially in the form attached to the Settlement Agreement as Exhibit 5, together with the
27 Claim Form, substantially in the form attached to the Settlement Agreement as Exhibit 1, to be
28 mailed, by first class mail, to the current or last known addresses of all reasonably identifiable

1 Settlement Class Members. The Court specifically approves the procedures set forth in the
 2 Settlement Agreement for identifying Settlement Class Members and notifying Class Members
 3 whose initial mailings are returned undeliverable. The Court further approves payment of notice
 4 costs as provided in the Settlement Agreement. The Court finds that these procedures, carried out
 5 with reasonable diligence, will constitute the best notice practicable under the circumstances and
 6 will satisfy the requirements of Fed. R. Civ. P. 23(c)(2) and Fed. R. Civ. P. 23(e)(1) and Due
 7 Process.

8 13. The Court preliminarily finds that the following counsel will fairly and adequately
 9 represent the interests of the Settlement Class and hereby appoints Kantrowitz, Goldhamer &
 10 Graifman, P.C., and Thomas P. Sobran, P.C., as Lead Settlement Class Counsel, and Stull, Stull &
 11 Brody as Settlement Class Liaison Counsel.

12 14. The Court directs that pursuant to Fed. R. Civ. P. 23(e)(2), a Fairness Hearing will
 13 be held on _____ [at least 140 days from entry of Preliminary
 14 Approval Order], to consider final approval of the Settlement (the “Fairness Hearing”) including,
 15 but not limited to, the following issues: (1) to determine whether to grant final approval to (a) the
 16 terms of the Settlement Agreement, (b) certification of the Settlement Class, (c) the designation of
 17 Plaintiffs as representatives of the Settlement Class, and (d) the designation of Class Counsel as
 18 counsel for the Settlement Class; (2) to rule on Class Counsel’s request for an award of reasonable
 19 attorneys’ fees and reimbursement of costs and for Service Awards to Class Representatives; and
 20 (3) to consider whether to enter the Final Approval Order. The Fairness Hearing may be
 21 adjourned by the Court and the Court may address matters set out above, including final approval
 22 of the Settlement, without further notice to the Settlement Class other than notice that may be
 23 posted at the Court and on the Court’s and Claims Administrator’s websites.

24 15. The Court directs that no later than thirty (30) days after the Notice Date,
 25 Settlement Class Counsel shall file all memoranda, including affidavits, declarations, and other
 26 evidence in support of the request for approval of the Settlement; Class Counsel’s request for
 27 approval of reasonable attorneys’ fees, costs, and reimbursement of expenses; and the request for
 28 Service Awards to the individual named plaintiffs. The Court further directs that no later than five

(5) days prior to the Final Fairness Hearing, Settlement Class Counsel shall file any supplemental memoranda addressing any objections and/or opt-outs. If Settlement Class Counsel and Defense Counsel do not reach agreement on reasonable attorney fees and costs/expenses, said counsel shall meet and confer to agree upon (a) a schedule for Defendants to file opposition to Settlement Class Counsel's motion for reasonable attorney fees and costs/expenses, which shall be at least sixty (60) days after the date of said meet and confer, (b) the time for Plaintiffs' reply thereto, and (c) whether the date of the Fairness Hearing needs to be changed. Prior to the time in which Defendant must file opposition to Settlement Class Counsel's motion for reasonable attorney fees and costs/expenses, Defendant shall be afforded at least forty-five (45) days to respond to any expert reports submitted by Class Counsel, and shall thereafter have a reasonable opportunity to depose such expert(s) prior to filing the opposition.

16. Persons wishing to object to the proposed Settlement and/or be heard at the Fairness hearing shall follow the following procedures:

(a) To object, a member of the Settlement Class, individually or through counsel, must file a written objection with the Clerk of this Court, and must also serve a copy thereof upon the following no later than forty-five (45) days after the Notice Date:

Counsel for Plaintiffs

Gary S. Graifman, Esq.
Kantrowitz, Goldhamer & Graifman, P.C.
Suite 200
747 Chestnut Ridge Road
Chestnut Ridge, NY 10977

Counsel for Defendants

Michael B. Gallub, Esq.
Herzfeld & Rubin, P.C.
125 Broad Street
New York, NY 10004

(b) Any objecting Settlement Class Member must include with his or her objection:

i. the objector's full name, address, and telephone number;

1 ii. the model, model year and Vehicle Identification Number of the
2 Settlement Class Vehicle, along with proof that the objector has owned or leased the
3 Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license
4 receipt);

5 iii. a written statement of all grounds for the objection accompanied by
6 any legal support for such objection;

7 iv. copies of any papers, briefs, or other documents upon which the
8 objection is based and are pertinent to the objection; and

9 v. any Settlement Class Member objecting to the Settlement shall
10 provide a list of all other objections submitted by the objector, or the objector's
11 counsel, to any class action settlements submitted in any court in the United States
12 in the previous five years, including the full case name with jurisdiction in which it
13 was filed and the docket number. If the Settlement Class Member or his, her or its
14 counsel has not objected to any other class action settlement in the United States in
15 the previous five years, he/she/it shall affirmatively so state in the objection.

16 (c) Subject to the approval of the Court, any objecting Settlement Class
17 Member may appear, in person or by counsel, at the Final Fairness Hearing to
18 explain why the proposed Settlement should not be approved as fair, reasonable,
19 and adequate, or to object to any motion for Class Counsel Fees and Expenses or
20 incentive awards. Any Settlement Class Member who does not provide a notice of
21 intention to appear in accordance with the deadlines and other specifications set
22 forth in the Notice, or who has not filed an objection in accordance with the
23 deadlines and other specifications set forth in the Settlement Agreement and the
24 Notice, may be deemed to have waived any objections to the Settlement and any
25 adjudication or review of the Settlement, by appeal or otherwise.

26 (d) Any Class Member who does not make his, her, or its objection in
27 the manner provided herein shall be deemed to have waived his, her, or its right to
28 object to any aspect of the proposed Settlement and/or to Settlement Class

1 Counsel's motion for reasonable attorneys' fees and reimbursement of litigation
2 expenses and for Service Awards to the Settlement Class Representatives. Such
3 Class Member shall forever be barred and foreclosed from objecting to the fairness,
4 reasonableness, or adequacy of the Settlement, or the requested attorneys' fees,
5 litigation expenses and Service Awards, and otherwise from being heard
6 concerning the Settlement, or the attorneys' fees and expenses request in this or any
7 other proceeding.

8 17. The Court appoints Epiq Global as the Settlement Administrator. The Parties are
9 hereby authorized to retain the Settlement Administrator to supervise and administer the Notice
10 Procedure as well as the processing of Claims.

11 18. All Settlement Class members shall have the right to opt out of the class at any time
12 during the opt-out period. The opt-out period shall run for forty-five (45) days following the
13 Notice Date. Any Settlement Class Member who timely elects to opt out of the Class (i) shall not
14 be bound by any orders or judgments entered in this Action; (ii) shall not be entitled to relief
15 under, or be affected by, the Settlement Agreement; (iii) shall not gain any rights by virtue of this
16 Settlement Agreement; and (iv) shall not be entitled to object to any aspect of this Settlement
17 Agreement.

18 19. Any Settlement Class Member who wishes to opt out of the Class must do so by
19 mailing a request for exclusion ("Request for Exclusion") to the Claims Administrator as provided
20 in the Notice. The Request for Exclusion must be postmarked on or before the expiration of the
21 opt out deadline, which will be forty-five (45) days after the Notice Date. To be effective, the
22 Request for Exclusion must state specifically and unambiguously his or her desire to be excluded
23 from the Settlement Class. Any purported Requests for Exclusion will be reviewed jointly by
24 counsel for Plaintiffs and Defendant according to the procedures set forth in the Settlement
25 Agreement, which the Court approves.

26 20. Any member of the Settlement Class failing to properly and timely mail such a
27 Request for Exclusion shall be automatically included in the Settlement Class and shall be bound
28 by all the terms and provisions of the Settlement Agreement and the Settlement, including the

1 release, and Order of Final Judgment. The Court shall resolve any disputes concerning the opt-out
2 provisions of the Settlement Agreement.

3 21. Upon Final Approval, all Settlement Class Members who have not timely and
4 properly opted out of the Settlement shall be deemed to have, and by operation of the Final Order
5 and Judgment shall have, fully and completely released, acquitted and discharged all Released
6 Parties from/for all Released Claims as set forth in the Settlement Agreement.

7 22. Upon Final Approval, with respect to the foregoing Released Claims, the Plaintiffs
8 and Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by
9 law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides:
10 “A general release does not extend to claims which the creditor does not know or suspect to exist
11 in his favor at the time of executing the release, which if known by him must have materially
12 affected his settlement with the debtor.”

13 23. Upon Final Approval, this Action will be deemed dismissed with prejudice.

14 24. In the event that the Settlement does not become effective for any reason, this
15 Preliminary Approval Order shall be rendered null and shall be vacated, and all orders entered and
16 releases delivered in connection herewith shall be null and void to the extent provided by and in
17 accordance with the Settlement Agreement. If the Settlement does not become effective, the
18 Defendant and any other Releasees shall have retained any and all of their current defenses and
19 arguments thereto (including but not limited to arguments that the requirements of Fed. R. Civ. P.
20 23(a) and (b)(3) are not satisfied for purposes of continued litigation). This action, and the Parties,
21 shall thereupon revert immediately to their respective procedural and substantive status prior to the
22 date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement
23 and all other related orders and papers had not been executed.

24 25. Class Counsel and Defendant’s Counsel are hereby authorized to use all reasonable
25 procedures in connection with approval and administration of the Class Action Settlement that are
26 not materially inconsistent with the Preliminary Approval Order or the Class Action Settlement,
27 including making, without further approval of the Court, minor changes to the Class Action
28

1 Settlement, to the form or content of the Class Notice, or to any other exhibits that the Parties
2 jointly agree are reasonable or necessary.

3 26. The Court shall retain continuing jurisdiction over the Action, the Parties and the
4 Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any
5 disputes or controversies arising with respect to the Settlement shall be presented by motion to the
6 Court, provided however, that nothing in this paragraph shall restrict the ability of the Parties to
7 exercise their rights as described above.

8
9 Dated: _____

Honorable James Donato
United States District Judge